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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216381
Party	Defendant Eunjoo K Egghart
Correspondence Address	ERIC O HAUGEN JACOBSON BUFFALO MAGNUSON ANDERSON & HOGEN PC 335 ATRIUM IFC BUILDING, 1295 BANDANA BLVD N ST PAUL, MN 55108 UNITED STATES haugenmail@haugenlaw.com, jfh@jacobsonbu
Submission	Other Motions/Papers
Filer's Name	Eric O. Haugen
Filer's e-mail	haugenmail@haugenlaw.com
Signature	/Eric O. Haugen/
Date	08/01/2014
Attachments	APPLICANT'S RESPONSE TO NOTICE OF DEFAULT 91216381.pdf(46044 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Egghart & Associates, LLC,	)	Opposition No. 91216381
	)	
Opposer,	)	Serial No. 85/595,982
	)	
vs.	)	Filed: April 12, 2012
	)	
Eunjoo K. Egghart,	)	For the mark: EJ EGGHART
	)	
Applicant.	)	Published on February 4, 2014
_____	)	

**APPLICANT’S RESPONSE TO NOTICE OF DEFAULT**

On July 15, 2014 this Board issued a Notice of Default against Applicant, Eunjoo K. Egghart (hereinafter “Ms. Egghart” or “Applicant”). Applicant respectfully submits the instant memorandum in order to show cause as to why a judgment by default should not be entered against her.

**BACKGROUND**

The instant application was filed by Opposer Egghart & Associates, LLC (hereinafter “Egghart & Associates” or “Opposer”) on May 13, 2014, and asserts a likelihood of confusion as between Applicant’s EJ EGGHART mark and a designation that Opposer purports to own, EGGHART. The application at issue in this matter was filed by Applicant on April 12, 2012.

On May 18, 2012 Opposer filed suit in Nevada State Court raising claims that relate to those at issue in this Opposition. Over the course of the last 18 months, the Applicant has changed counsel and the Nevada litigation currently is being handled on Applicant’s behalf by attorneys who are not associated with either the undersigned or others who have worked on the application at issue in the instant proceeding. The attorneys who have worked on the instant

application, including the undersigned, understood the Applicant's Nevada-based litigation attorneys were handling all adversarial proceedings, including those in state court and this Opposition proceeding. As such, the undersigned mistakenly, and in good faith, believed that all matters relevant to the instant proceeding would be handled by the attorneys representing the Applicant in other related adversarial matters.

### DISCUSSION

Applicant requests that the instant Notice of Default be set aside pursuant to Fed. R. Civ. P. 55(c) and TBMP §312.02. Applicant's request is, as discussed below, fully reasonable under the circumstances present.

#### A. Standard for Setting Aside Notice of Default

At this juncture, Ms. Egghart is required to show cause why a judgment of default should not be entered against her in accordance with Fed. R. Civ. P. 55(b)(2). TBMP §312.02 states as follows:

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. Nevertheless, entry of default judgment may be necessary in some cases.

All three of the §312.02 factors, discussed in an individual fashion below, support Applicant's request that the instant Notice of Default be set aside.

B. Applicant's Delay in Filing an Answer Was Not the Result of Willful Conduct or Gross Neglect on the Part of Applicant

Applicant's delay in filing an Answer to the instant Opposition was based upon a good faith belief, on the part of the attorney representing Applicant in litigation matters, that Applicant's trademark attorneys would be handling the response to the instant Opposition. Conversely, Applicant's trademark attorneys carried a good faith belief that Applicant's litigation attorney was handling all adversarial proceedings, litigation and Opposition proceedings alike. The delay in filing the instant response, in other words, was not the result of willful conduct or gross neglect on the part of Applicant. Rather, it was based upon a reasonable but incorrect belief on the part of individuals representing Applicant that other parties would be filing the Answer relevant to the instant Opposition proceeding. Applicant respectfully contends that this belief, while mistaken, does not constitute "willful conduct or gross neglect on the part of (Applicant)", and that as such the first §312.02 factor weighs in Applicant's favor.

C. Opposer Will Not be Substantially Prejudiced by the Delay

The Answer to the instant Opposition was due for filing on June 22, 2014. The parties to the instant Opposition have been involved in litigation concerning the Applicant's EGGHART at issue in this proceeding for a period of time exceeding two years. This litigation, venued in Nevada State Court, involves, in effect, the very issues present in the instant Opposition.<sup>1</sup> The Nevada litigation remains ongoing and active. Egghart and Associates has not been substantially prejudiced by Applicant's delay in filing its Answer to the instant Opposition. The issues present

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<sup>1</sup> In fact, in short order Applicant will be submitting a Motion to Suspend Proceedings Pursuant to 37 C.F.R. §2.117.

in the instant Opposition directly tie-in to the ongoing and unresolved issues present in the Nevada litigation.

D. Applicant has Meritorious Defenses to this Opposition

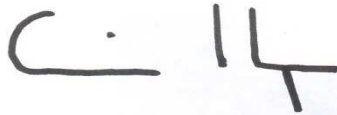
Simultaneously with the filing of this response to Notice of Default, Ms. Egghart is filing its Answer to the Opposition. Applicant has meritorious defenses to this Opposition. Applicant has been using the very mark cited against her by Opposer for far longer than Opposer has used the mark. Additionally, Ms. Egghart has not given Opposer permission to use her name, Egghart, in connection with the designation relied upon by the Opposer: EGGHART. Simply stated, Opposer's EGGHART designation refers to and is owned by Applicant.

While Applicant respectfully contends that, as discussed above, the merits of this case obviously weigh in her favor, all that is required at this time is "a plausible response to the allegations in the Complaint". Applicant's response to the instant Opposition far exceeds this standard.

## CONCLUSION

Based on the above, Applicant respectfully contends that the Notice of Default should be set aside. Applicant's delay in filing an Answer was not the result of willful conduct or gross neglect on her part, Opposer will not be substantially prejudiced by the delay, and Applicant has meritorious defenses to the action.

Respectfully submitted,



Date: August 1, 2014

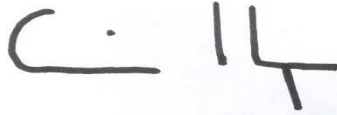
THE JACOBSON LAW GROUP  
Eric O. Haugen, Of Counsel  
[haugenmail@haugenlaw.com](mailto:haugenmail@haugenlaw.com)  
Joseph F. Halloran  
[jhalloran@thejacobsonlawgroup.com](mailto:jhalloran@thejacobsonlawgroup.com)  
335 Atrium Office Building  
1295 Bandana Boulevard  
St. Paul, MN 55108  
Phone: (651) 644-4710

Attorneys for Applicant,  
Eunjoo K. Egghart

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSE TO NOTICE OF DEFAULT was served on counsel for Egghart & Associates, LLC, Ian Burns, ATIP Law, 4790 Caughlin Parkway #701, Reno, Nevada 89519, via U.S. Mail, postage pre-paid on August 1, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. H' with a stylized flourish.

Date: August 1, 2014

THE JACOBSON LAW GROUP  
Eric O. Haugen, Of Counsel  
[haugenmail@haugenlaw.com](mailto:haugenmail@haugenlaw.com)  
Joseph F. Halloran  
[jhalloran@thejacobsonlawgroup.com](mailto:jhalloran@thejacobsonlawgroup.com)  
335 Atrium Office Building  
1295 Bandana Boulevard  
St. Paul, MN 55108  
Phone: (651) 644-4710

Attorneys for Applicant,  
Eunjoo K. Egghart